
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 303 **Hearing Date:** April 25, 2017
Author: Morrell
Version: April 17, 2017
Urgency: No **Fiscal:** Yes
Consultant: MK

Subject: *Crimes: Pimping, Pandering, and Solicitation of Prostitution of a Minor*

HISTORY

Source: Author

Prior Legislation: None

Support: Unknown

Opposition: American Civil Liberties Union; California Attorneys for Criminal Justice;
California Public Defenders Association

PURPOSE

The purpose of this bill is to increase the penalty for human trafficking of a minor and solicitation of a minor.

Existing law provides that a person who deprives or violates the personal liberty of another with the intent to obtain forced labor or services, is guilty of human trafficking and shall be punished by imprisonment in the state prison for 5, 8 or 12 years and a fine of not more than \$5,000 (plus approximately 310% in penalty assessments) (Penal Code § 236.1(a))

Existing law provides that a person who deprives or violates the personal liberty of another with the intent to effect or maintain a violation of specified offenses relating to pimping, pandering or obscene matter is guilty of human trafficking and shall be punished by imprisonment in the state prison for 8, 14 or 20 years and a fine of not more than \$5,000 (plus approximately 310% in penalty assessments). (Penal Code § 236.1(b))

Existing law provides that a person who caused, induces or persuades, or attempts to cause, induce or persuade, a person who is a minor at the time of the commission of the offense to engage in a commercial sex act with the intent to effect or maintain a violation of specified pimping, pandering or obscene matter related offenses is guilty of human trafficking punishable as follows:

- Five, 8 or 12 years and a fine of not more than \$500,000 (plus approximately 310% in penalty assessments).
- Fifteen years to life and a fine of not more than \$500,000 (plus approximately 310% in penalty assessments) when the offense involves force, fear, fraud, deceit,

coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person. (Penal Code § 236.1(c))

This bill provides if it is pled and proven that the the victim in a violation of Penal Code Section 236. Was under 16 years of age at the time of the offense, the court shall impose an additional consecutive term of three, four or five years in state prison.

Existing law defines misdemeanor disorderly conduct as including an individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with the intent to receive compensation, money, or anything of value from another person. An individual agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647 (b)(1))

Existing law also defines misdemeanor disorderly conduct as including an individual who solicits, or agrees to engage in, or who engages in, any act of prostitution with another person who is 18 years of age or older in exchange for the individual providing compensation, money, or anything of value to the other person. An individual agrees to engage in an act of prostitution when, with the specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by another person who is 18 years of age or older to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647(b)(2))

Existing law also defines misdemeanor disorderly conduct as including an individual who solicits, or who agrees to engage in, or who engages in, any act of prostitution with another person who is a minor in exchange for the individual providing compensation, money or anything of value to the minor. An individual agrees to engage in an act of prostitution when, with the specific intent to so engage, he or she manifests an acceptance of an offer or solicitation by someone who is a minor to so engage, regardless of whether the offer or solicitation was made by a minor who also possessed the specific intent to engage in an act of prostitution. (Penal Code § 647(b)(3))

Existing law provides that if a crime is committed in violation of Penal Code Section 647 (b) and the person who was solicited was a minor at the time of the offense, and if the defendant knew or should have known the person who was solicited was a minor at the time of the offense, the violation is punishable by imprisonment in the county jail for not less than two days and not more than one year and/or by a fine not exceeding \$10,000 (plus approximately 310% penalty assessments). The court may, in unusual cases, when the interests of justice are best served, reduce or eliminate the mandatory two days' imprisonment. (Penal Code § 647(m))

This bill instead makes the penalty for solicitation of a minor a wobbler with a penalty of six months to one year in the county jail and/or by a fine not exceeding \$15,000 (plus approximately 310% penalty assessments) or by imprisonment in the county fail for 2, 3 or 4 years.

This bill deletes the specific authorization for a court to reduce the sentence in the interest of justice.

COMMENTS

1. Need for This Bill

According to the author:

The Los Angeles Times has reported that, “an analysis of jail data has found that incarceration in some counties has been curtailed or virtually eliminated for a variety of misdemeanors.”¹ Realignment has brought about numerous overcrowding issues for county jails. As a result, these counties have had to begin to find ways to reduce their jail populations. In order to do this, jails have begun to look to misdemeanants as candidates for early release. In fact, according to this analysis, in some counties misdemeanants virtually serve no time at all. The most recent data from the BSCC–PPIC Multi-County Study found that the average length of stay in a county jail for a misdemeanor offense against a person was only 18 days in 2015, while the average length of stay for a felony offense against a person was 84 days.²

The current penalty under California law for the solicitation of a minor for prostitution is a simple misdemeanor enhancement punishable only by, “imprisonment in a county jail for not less than two days and not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that fine and imprisonment.” Given the recent move towards early releases for misdemeanants, this penalty does not adequately match the heinous nature of the crime committed.

SB 303 seeks to remedy this by taking the measured approach of giving judges the additional option of sentencing, pursuant to subdivision (h) of Section 1170 (a realigned felony), a predator who solicits and engages in prostitution with a minor. This approach takes into account recent concerns with prison overcrowding and allows for time to be served in a county jail. It also allows judges the discretion of continuing to sentence these crimes as misdemeanor enhancements as prescribed in current law.

In addition, California law currently recognizes the heinous nature of pimping, pandering, and procurement of a minor under the age of 16 for the purposes of prostitution. Under Penal Code Sections 266h, 266i, and 266j there are separate penalties established for a minor who is under the age of 18 and a minor who is under the age of 16. The penalties established for a minor under the age of 16 are greater. These provisions are especially important when we look at the fact that the U.S. Department of Homeland Security has reported that the average age of a child entering prostitution in the United States is between 11 and 14³ years of age. However, under Penal Code 236.1, which was established when voters passed Proposition 35 in 2012, there is no separate increased punishment for a minor who is under the age of 16. SB 303 would correct this omission from Penal Code

¹ <http://www.latimes.com/local/crime/la-me-ff-early-release-20140817-story.html>

² http://www.ppic.org/main/publication_quick.asp?i=1210

³ <https://www.dhs.gov/sites/default/files/publications/blue-campaign/Blue%20Campaign%20-%20Human%20Trafficking%20101%20for%20School%20Administrators%20and%20Staff.pdf>

Section 236.1, and provide an increased penalty for the trafficking of a young child under the age of 16.

Child prostitution is a significant problem in California, which has 3 of the 13 FBI-designated “High Intensity Child Prostitution Areas.” These areas include Los Angeles, San Diego, and San Francisco.⁴ SB 303 seeks to protect these most vulnerable members of our communities by increasing these insufficient penalties on those who wish to victimize and brutalize them

2. Ongoing Concerns over Prison Overcrowding

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

The court also ordered California to implement the following population reduction measures in its prisons:

- Increase prospective credit earnings for non-violent second-strike inmates as well as minimum custody inmates.
- Allow non-violent second-strike inmates who have reached 50 percent of their total sentence to be referred to the Board of Parole Hearings (BPH) for parole consideration.
- Release inmates who have been granted parole by BPH but have future parole dates.
- Expand the CDCR’s medical parole program.
- Allow inmates age 60 and over who have served at least 25 years of incarceration to be considered for parole.
- Increase its use of reentry services and alternative custody programs.

(Opinion Re: Order Granting in Part and Denying in Part Defendants’ Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) Following the implementation of these measures along with the passage of Proposition 47, approved by California voters in November 2014, California met the federal court’s population cap in December 2015. (Defendants’ December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown*.) The administration’s most recent status report states that as “of December 14, 2016, 114,031 inmates were housed in the State’s 34 adult institutions” which amounts to approximately 135.3% of design capacity, and 4,704 inmates were housed in out-of-state facilities. (Defendants’ December 2016 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the “durable solution” to prison overcrowding “consistently demanded” by the court. (Opinion Re:

⁴ <https://oig.justice.gov/reports/FBI/a0908/chapter4.htm#122>

Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).

3. Additional Penalty for Human Trafficking

Existing law sets for the penalties for human trafficking. A person who deprives the liberty of a person for forced labor is punished by 5, 8 or 12 year in prison and up to a \$500,000 fine (approximately \$2,050,00 with penalty assessments). A person who causes or persuades a minor to engage in a commercial sex act is guilty punishable in the state prison for 5, 8 or 12 years and up to a \$500,000 fine (approximately \$2,050,00 with penalty assessments) or 15 to life and the fine if the offense involves, force, fear, fraud, deceit, coercion, violence etc.

This bill would provide that in addition to the penalty for human trafficking for commercial sex, if it is proven that the victim was less than 16 years of age the court shall impose and addition term of 3, 4 or 5 years in state prison.

In light of the already significant penalty for human trafficking, and the overcrowding that is still occurring in our prisons, is this additional penalty appropriate?

4. Solicitation of a Minor

Existing law provides that the penalty for solicitation of a minor, that the person knew or should have known was a minor, is two days to one year in jail and/or a fine of not more than \$10,000 (\$410,000 with penalty assessments). Existing law also provides that the court may, in unusual circumstance eliminate the mandatory two days.

This bill instead provides that solicitation of a minor is a wobbler with a penalty of 6 months to one year in county jail and/or by a fine of \$15,000 (\$61,500 with penalty assessments) or 2, 3 or 4 years in the county jail. This bill also deletes the court's discretion to eliminate the minimum sentence.

Under existing law, a person who is soliciting a minor may also be charged with any number of offenses, or attempted offenses, relating to child abuse thus misdemeanors and felonies are already available for the offense in this bill. Should solicitation of a minor, where the prosecutor is not inclined to charge it as child abuse, be potentially subject to a felony? The author's background talks about concerns over jail overcrowding but this bill adds to that by creating a jail felony of 2, 3 or 4 years.

While the section amended by this bill had a specific reference to court discretion to eliminate the minimal jail time, and this bill eliminates that, the judge always has the discretion to place a person on probation so eliminating the explicit discretion is unlikely to have any impact.